



7

The Mysore Gazette

Vol. 43.]

PUBLISHED BY AUTHORITY.

[No. 6.

BANGALORE, THURSDAY, FEBRUARY 6, 1908.

PART III.

Legislative Measures and Rules thereunder.

NOTIFICATION.

No. 306—L. C. 20-07, dated 5th February 1908.

Under Rule 31 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying bill further to amend the Code of Civil Procedure is published for general information, together with a statement of objects and reasons therefor:—

Draft of a Bill further to amend the Code of Civil Procedure.

Whereas it is expedient further to amend the Code of Civil Procedure as in force in Mysore, His Highness the Maharaja is pleased to enact as follows:—

Preamble.

Amendment of Section 310(A) 1. The following shall be substituted for clause b (ii) of sub-section (1) of Section 310 (A):—

“for payment to the decree holder, a sum equal to the purchase money, together with the costs of the attachment and sale, provided that in cases in which such sum is less than the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered (less any amount which may since the date of such proclamation of sale have been received by the decree holder), it shall not be necessary for the judgment-debtor to pay more than this latter amount.”

2. The following shall be added between sub-sections (1) and (2) of the said Section:—

“(1A). If such deposit is not made within thirty days of the sale, the court shall pass an order setting aside the sale.”

4. In Section 586, for the words "fifty rupees," the words "five hundred rupees," shall be substituted.

Amendment of Section 586.

5. To Section 588 of the s. Code, the following clause shall be added, namely—

"(16 A). Orders under Section 310A."

STATEMENT OF OBJECTS AND REASONS.

The accompanying Bill is intended to rectify certain formal defects in the Code of Civil Procedure as amended by Regulation, III of 1906, and to promote the speedier disposal of business in the Chief Court by curtailing the right of second appeal to a certain extent.

2. As Section 310A introduced by Regulation, III of 1906, stands, the judgment debtor is in all cases required to pay into Court in addition to the 5 per cent of the purchase money payable to the purchaser as and by way of compensation for the cancellation of the sale made in his favor, the full amount of the purchase money together with the cost of attachment and sale, for payment to the decree-holder. It will be seen that the section thus makes the decree-holder entitled to the whole amount of the purchase money even though the same may be greater than the decretal amount which is all he can justly lay claim to. To remedy this apparent inconsistency, clause (ii) has now been amended suitably. Also a new sub-section has been added to it to make it clear that where a deposit is made, the Court shall pass an order setting aside the sale. A clause has also been added to Section 588, so as to render orders under Section 310A appealable, a fact already implied in Sub-section (4), Section 310A.

3. When the Code of Civil Procedure was introduced in Mysore in 1884, clause (d) was added to Section 584 so as to allow to the Chief Court (then newly formed, with three Judges) a second appeal on questions of fact when the two lower Courts differed in opinion on such questions. The Chief Court have recommended that either clause (d) may be repealed altogether, or that the provisions in regard to second appeals on questions of fact may be limited to appeals of the value of Rs. 500 and over. Considering the fact that the decrees of the Chief Court are final in Mysore, and that there is no further appeal to a higher tribunal as in British India, the Government are of opinion that the second alternative is the preferable one. Hence the amendment proposed as regards Section 584.

4. Section 586, as amended by Regulation, II of 1884, allows second appeals in all suits of a small cause nature exceeding Rs. 50 in value. The limit is Rs. 500 in British India; and there seems to be no good reason why the limit should not be similarly raised in Mysore. The Chief Court have urged the change on the ground that second appeals in petty cases have greatly blocked the progress of litigation. Section 586 is proposed to be amended accordingly.

By Order,

K. MYLAR RAO,

Secy., Mysore Legislative Council.